



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 7
901 NORTH 5TH STREET
KANSAS CITY, KANSAS 66101

FEB 18 2009

FEDERAL EXPRESS

Tracking Number: 8664 9889 6644

David Fiala
LHP, LLC
233 South 13th Street, Suite 1506
Lincoln, NE 68508

RE: Notice of NonCompliance
EPA Case Number 1000002180

Dear Mr. Fiala:

The United States Environmental Protection Agency (EPA) hereby serves this Notice of Noncompliance on LHP, LLC for violations of the Real Estate Notification and Disclosure Rule which is codified at 40 CFR Part 745, Subpart F (Disclosure Rule).

The Disclosure Rule imposes upon sellers, lessors, and agents, certain requirements on the sale or lease of housing built before 1978 (target housing). Under the Disclosure Rule, a seller or lessor must disclose to the purchaser or lessee the presence of any known lead-based paint and/or lead-based paint hazards; provide available records and reports; provide a lead hazard information pamphlet; give purchasers a 10-day opportunity to conduct a risk assessment or inspection; and attach specific disclosure and warning information to the sales or leasing contract before the purchaser or lessee is obligated under a contract to purchase or lease target housing. Failure to comply with the Disclosure Rule requirements is a violation of Section 409 of the Toxic Substances Control Act (TSCA), 15 U.S.C. § 2689, and subjects violators to potential civil penalties under Section 16 of TSCA.

We have completed our review of the information you submitted in response to our June 5, 2008 request for information.

The following target housing lease transaction documents were reviewed:

- December 7, 2007 lease for 2601 Vine Street, #1, Lincoln, NE 68508
- April 29, 2008 lease for 2601 Vine Street, #1, Lincoln, NE 68508
- May 26, 2007 lease for 2601 Vine Street, #2, Lincoln, NE 68508
- February 6, 2007 lease for 2601 Vine Street, #3, Lincoln, NE 68508
- August 25, 2008 lease for 2601 Vine Street, #3, Lincoln, NE 68508
- December 31, 2008 lease for 2601 Vine Street, #3, Lincoln, NE 68508
- August 1, 2008 lease for 2601 Vine #4, Lincoln, NE 68503

- April 18, 2006 lease for 2601 Vine Street, #5, Lincoln, NE 68508
- February 3, 2006 lease for 2603 Vine Street, #4, Lincoln, NE 68508

1. The following violations were observed with regard to all of the above listed lease transactions:

- **Failure to disclose prior to obligation under contract to lease target housing, as required by 40 CFR §745.107.** Specifically, you failed to complete all of the required elements of disclosure prior to the lessees' becoming obligated under a contract to lease target housing.
- **Failure to include, either on an attachment or within the lease contract, the "Lead Warning Statement" contained in 40 CFR §745.113(b)(1), as required by 40 CFR §745.113(b)(1).** Specifically, the Lead Warning Statement that you have included in your leases pertains to sales of target housing, not leases. The correct Lead Warning Statement for leases, which is specified in the regulations, appears on the enclosed blank Disclosure Form for your use.
- **Failure to include, either on an attachment or within the lease contracts, a list of any records or reports available to the lessor pertaining to lead-based paint and/or lead-based paint hazards in the target housing which were provided to the lessee or indicating that no such reports or records exist, as required by 40 CFR §745.113(b)(3).**
- **Failure to include, either on an attachment or within the lease contract, a statement by the lessee affirming receipt of the information set out in 40 CFR §745.113(b)(2) and 40 CFR §745.113(b)(3) and the lead hazard information pamphlet, as required by 40 CFR §745.113(b)(4).**
- **Failure to include, either on an attachment or within the lease contract, the dated signatures of the lessor, agent and lessee certifying to the accuracy of their statements, as required by 40 CFR §745.113(b)(6).**
- **Failure to retain a copy of the completed attachment or lease contract containing the information required by 40 CFR §745.113(b) for no less than three years from the commencement of the leasing period, as required by 40 CFR §745.113(c)(1).**

2. The following additional violations were observed with regard to the following lease transactions:

- August 25, 2008 lease for 2601 Vine Street, #3, Lincoln, NE 68508
- December 31, 2008 lease for 2601 Vine Street, #3, Lincoln, NE 68508
- August 1, 2008 lease for 2601 Vine #4, Lincoln, NE 68503

- **Failure to disclose to the lessee the presence of any known lead-based paint and/or lead-based paint hazards in the target housing, as required by 40 CFR §745.107(a)(2).** Specifically, the May 21, 2008 four page lead-based paint inspection report prepared by the Nebraska Department of Health and Human Services documents the presence of lead-based paint both in the interior of apartment #4, 2601 Vine, but also in common areas which are accessible to all occupants of all five units in this building. Therefore, this report must be disclosed, with any other information pertaining to lead-based paint and/or lead hazards in this property to all future tenants in all five units.
- **Failure to provide the lessee with any available records or reports pertaining to lead-based paint and/or lead-based paint hazards, as required by 40 CFR §745.107(a)(4).** Since all three of these leases were signed after the lead-based paint inspection report was provided to the lessor, a copy of the inspection report was required to be provided before the lessees became obligated under contracts to lease the housing.

We are enclosing a folder of compliance assistance information, including a blank disclosure form and instructions for completion, and sample disclosure forms illustrating how to correctly complete disclosure for the five apartments at 2601 Vine Street. We are also enclosing a color copy of the *Protect Your Family From Lead In Your Home* pamphlet, a black-and-white photocopyable version, and instructions regarding how to obtain additional copies of the pamphlet.

The required elements of disclosure may be attached to, or incorporated into, the lease, but all elements must be included. A copy of any record or report relating to existing or past lead-based paint or lead hazards on the property must be provided to the lessee, and must be listed on the Disclosure Form. This includes any record or report relating to the presence of lead-based paint or lead contamination in dust or soil. Reports must be disclosed even if testing did not identify any soil or other lead-based paint hazards.

This Notice of NonCompliance is issued to you for the violations listed in this document. You should make the necessary changes to your practices to ensure that all future sales and lease transactions involving target housing are made in strict accordance with the Disclosure Rule. Each violation of the Disclosure Rule is a prohibited act under TSCA § 409 which can result in civil penalties under TSCA § 16 of up to \$16,000 per violation.

You must immediately complete disclosure correctly and fully for all of your current tenants. For the current tenants in all five units at 2601 Vine, please provide a copy to us by **March 6, 2009** of the completed disclosure forms. In order for us to be in a position to settle this case without the assessment of a civil penalty, we require your cooperation in demonstrating that you are able to comply correctly with the applicable regulations.

The EPA retains its enforcement authority for violations discovered as a result of the information requests beginning on June 5, 2008. If you have any questions regarding this letter, please contact me at (913) 551- 7730, or jones.harriett@epa.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Harriett Jones", written in a cursive style.

Harriett Jones, P.E.
Lead Enforcement Coordinator
Toxics and Pesticides Branch

Enclosures: Compliance Assistance Information